

**REMARKS**

Claims 1, 3-13, 15-17 and 19-24 are pending in this application. Claims 1, 13, 17 and 21 are independent claims. Claims 4, 6, 7-13, 16, 22 and 23 are amended. Claim 24 is added. Reconsideration and allowance of the present application are respectfully requested.

**Claim Rejections Under 35 U.S.C. §103**

Claims 1, 3, 4, 6-13, 15, 17, 19, 21 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2001/0055356 to Davies (hereinafter “Davies”) in view of U.S. Patent Publication No. 2005/0031051 to Rosen et al. (hereinafter “Rosen”) and further in view of U.S. Patent Publication No. 2001/0029523 to Mcernan et al. (hereinafter “Mcernan”). This rejection is respectfully traversed.

Applicants submit that the combination of Davis, Rosen and Mcernan does not teach or suggest the combination of elements recited in claims 1, 3, 4, 6-13, 15, 17, 19, 21 and 22. Independent claims 1 and 21, in part, recite “foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when the detecting step detects an acknowledgement transmission from the each of the plurality devices except for said particular device.”

Independent claim 13, in part, recites “forego retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when an acknowledgement transmission from the each of plurality devices except for said particular device is detected.”

Independent claim 17, in part, recites “means for foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when said means for detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device.” As acknowledged in the Office Action, the combination of Davis and Rosen does not teach or suggest these features.

Mcernan does not cure the deficiencies of Davis and Rosen. Mcernan discloses that according to TCP, data is sent using UDP packets, but there is an underlying “handshake” between sender and recipient that ensures a suitable communications connection is available. Furthermore, additional data is added to each packet identifying its order in an overall

transmission. After each packet is received, the receiving device transmits acknowledgment of the receipt to the sending device. This allows the sender to verify that each packet of data sent has been received, in the order it was sent, to the receiving device. See paragraph 0023 of McTernan.

McTernan further discloses that a media player issues requests for media packets to a server. The media player or other application requesting data from the server accepts and records receipt of packets in memory. Upon receipt of a duplicate packet, the client will stop receiving further packets, as the receipt of a duplicate packet is an indication that the packet sequence has looped around to the point at which the client first started receiving packets and therefore the client should have received all the packets in the sequence. The client checks whether any packets in the sequence are missing and, if so, determines if the time to wait for the looping data sender to retransmit the packet is greater than a time threshold, such as the time needed to directly request and receive the missing packet or packets from the server, or a predefined threshold set by the content producer. If the time to wait for the packet to be received is greater than the threshold, the download manager issues a request to the client request handler. Upon receiving the request, the client request handler accesses the looping data sender, duplicates the requested packet and transmits it to the client. The result is that clients are continually fed a stream of requested data and can recover missing packets by either simply awaiting retransmission of the packet or requesting it directly, whichever the client deems is most efficient given the bandwidth constraints of the client. See paragraph 0071 of McTernan.

McTernan does not teach or suggest “foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when the detecting step detects an acknowledgement transmission from the each of the plurality devices except for said particular device,” as recited in the pending claims. Instead, as noted above, paragraph 0071 of McTernan discloses that clients are continually fed a stream of requested data and can recover missing packets by either simply awaiting retransmission of the packet or requesting it directly, whichever the client deems is most efficient given the bandwidth constraints of the client. If the client in McTernan does not receive a packet, there is no foregoing of future transmission. Instead, the client either waits for retransmission of the missing packet or directly requests transmission of the missing packet.

Claims 1, 13, 17 and 21, on the other hand, recite “foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when the detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device.”

Based on the distinctions noted above, Applicants respectfully submit that the cited references do not teach or suggest the combination of elements recited in claims 1, 13, 17 and 21. Each of claims 3, 4, 6-12, 15, 19 and 22 depends on claims 1, 13, 17 and 21, and thus incorporates all of the elements of claims 1, 13, 17 and 21, in addition to the further limitations recited in claims 3, 4, 6-12, 15, 19 and 22. Hence, claims 3, 4, 6-12, 15, 19 and 22 are also allowable at least because of their dependence on claims 1, 13, 17 and 21. Therefore, Applicants respectfully request that this rejection of claims 1, 3, 4, 6-13, 15, 17, 19, 21 and 22 under 35 U.S.C. §103 be withdrawn.

Claims 5, 16, 20 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Davies in view of Rosen in view of McTernan, and in further view of U.S. Patent Publication No. 2002/0136268 to Gan et al. (hereinafter “Gan”). This rejection is respectfully traversed.

Each of claims 5, 16, 20 and 23 depend on claims 1, 13, 17 and 21, and thus, incorporates each of the elements of these claims. Gan does not cure the deficiencies of Davis and Rosen, as outlined above. Specifically, Gan does not teach or suggest “foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when said means for detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device,” as recited in 1, 13, 17 and 21 upon which claims 5, 16, 20 and 23 depend. Therefore, Applicants respectfully request that this rejection of claims 5, 16, 20 and 23 under 35 U.S.C. §103 be withdrawn.

**Disclaimer**

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

**CONCLUSION**

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 27592-00431-US from which the undersigned is authorized to draw.

Dated: May 1, 2009

Respectfully submitted,

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